

REPRESENTATIVE FOR PETITIONER: Joshua Neal, Barrett & McNagny, LLP

REPRESENTATIVE FOR RESPONDENT: Susan Engelberth, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rainbow Rascals Warsaw, LLC,	)	Petitions:	43-032-15-2-8-00611-18
	)		43-032-16-2-8-00610-18
Petitioner,	)		43-032-17-2-8-00609-18
	)		43-032-18-2-8-00608-18
	)		43-032-18-2-8-00597-18
v.)		
	)	Parcel Nos.:	43-11-10-300-089.000-032
	)		43-11-10-300-767.000-032
Kosciusko County Assessor,)		
	)	County:	Kosciusko
Respondent.)		
	)	Assessment Years:	2015, 2016, 2017 & 2018

Appeals from the Final Determinations of the
Kosciusko County Property Tax Assessment Board of Appeals

April 10, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Rainbow Rascals Warsaw, LLC, sought early childhood educational exemptions for two facilities in Kosciusko County. Rainbow failed to show that either of the facilities were properly certified on the assessment dates as required by Indiana Code 6-1.1-10-46. Thus, the subject properties are ineligible for an exemption for any of the assessment dates at issue.

PROCEDURAL HISTORY

2. Rainbow timely filed Form 136 exemption applications for tax years 2015-2018 for its 62 Capital Drive facility. It also filed a 2018 application for the 82 Capital Drive facility. The Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) denied all of the applications.¹
3. The Assessor stated that the PTABOA determinations were mailed to the address listed on the applications. Rainbow filed Form 132 petitions for review on May 24, 2018. This was over 45 days past the date of mailing listed on the Form 120s for 2015-2017 for the 62 Capital Drive facility. Rainbow claimed it never received those PTABOA determinations.
4. On November 15, 2018, the Board’s designated Administrative Law Judge (“ALJ”), David Smith, held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject properties. Tracy Sykes was sworn and testified under oath for the Petitioner. Susan Engelberth, the Kosciusko County Assessor, was sworn and testified on behalf of the Respondent.
5. The Parties submitted the following exhibits:

Petitioner’s Exhibit 1:	Michigan Articles of Organization for Rainbow Rascals Warsaw LLC,
Petitioner’s Exhibit 2:	Michigan Articles of Organization for Rainbow Rascals IN-Warsaw II LLC,
Petitioner’s Exhibit 3:	Michigan Certificate of Amendment-Corporation for REE Midwest, Inc.,
Petitioner’s Exhibit 4:	REE Midwest, Inc. BYLAWS,
Petitioner’s Exhibit 5:	Facility activity schedules,
Petitioner’s Exhibit 6:	Facility activity schedules,
Petitioner’s Exhibit 8:	Employee staff lists for both facilities,
Petitioner’s Exhibit 9:	“Paths to Quality” LEVEL 3 certificate for Rainbow Child Care Center for 62 Capital Drive and recommendation letter,

¹ There is some dispute over whether Rainbow properly appealed its personal property for some years under appeal. We need not address this issue because we resolve the appeal on other grounds.

Petitioner’s Exhibit 10:	“Paths to Quality” LEVEL 1 certificate for Rainbow Child Care Center-WR 2 for 82 Capital Drive,
Petitioner’s Exhibit 11:	Lease between Rainbow Rascals Warsaw, LLC and REE Midwest, Inc. for 62 & 82 Capital Drive,
Petitioner’s Exhibit 12:	Lease between Rainbow Rascals IN-Warsaw II LLC and REE Midwest, Inc. for 82 Capital Drive,
Petitioner’s Exhibit 13:	Form 132 “Petition(s) for Review...” for 2015, 2016, 2017, & 2018 for 62 Capital Drive,
Petitioner’s Exhibit 14:	Form 120 notices of denial from Assessor for 2015, 2016, 2017 & 2018 for 62 Capital Drive,
Petitioner’s Exhibit 15:	Form 136 applications (partial) for 2015, 2016, 2017 & 2018 for 62 Capital Drive,
Petitioner’s Exhibit 16:	Form 132 for 2018 for 82 Capital Drive,
Petitioner’s Exhibit 17:	Form 120 for 2018 for 82 Capital Drive,
Petitioner’s Exhibit 18:	Form 136 application for 2018 for 82 Capital Drive,
Petitioner’s Exhibit 19:	Affidavit of Chauncey Hitchcock
Petitioner’s Exhibit 20:	REE Midwest, Inc. budgets and income statements,
Petitioner’s Exhibit 21:	Operating statements,
Petitioner’s Exhibit 22:	Operating statements,
Petitioner’s Exhibit 23:	Operating statements,
Petitioner’s Exhibit 24:	Operating statements. ²
Respondent’s Exhibit A:	Form 120 for 2015 for 62 Capital Drive,
Respondent’s Exhibit B:	Minutes from June 8, 2015 PTABOA meeting,
Respondent’s Exhibit C:	Property tax exemption checklist & May 8, 2014 State Memo,
Respondent’s Exhibit D:	2015 Form 136 Application,
Respondent’s Exhibit E:	E-mails,
Respondent’s Exhibit F:	2015 Form 104,
Respondent’s Exhibit G:	Form 120 for 2016 for 62 Capital Drive,
Respondent’s Exhibit H:	Minutes of the April 11, 2016 PTABOA meeting,
Respondent’s Exhibit I:	Property tax exemption checklist,
Respondent’s Exhibit J:	2016 Form 136,
Respondent’s Exhibit K:	2016 Form 104,
Respondent’s Exhibit L:	Form 120 “for 2017 for 62 Capital Drive,
Respondent’s Exhibit M:	Minutes of the April 17, 2017 PTABOA meeting,
Respondent’s Exhibit N:	Property tax exemption checklist,
Respondent’s Exhibit O:	2017 Form 136 Application,
Respondent’s Exhibit P:	2017 Form 104,
Respondent’s Exhibit Q:	Form 120 for parcel 04-726014-78 (62 Capital Drive),
Respondent’s Exhibit R:	Minutes of April 23, 2018 PTABOA meeting,

² Rainbow’s exhibit binder had a tab for an Exhibit 25 but no exhibit was included.

Respondent's Exhibit S: Property tax exemption checklist & attached notes,
Respondent's Exhibit T: 2017 Form 136 Application,
Respondent's Exhibit U: 2018 Form 104,
Respondent's Exhibit V: Form 120 for parcel 04-726019-70 (82 Capital Drive),
Respondent's Exhibit W: Minutes from April 23, 2018 PTABOA meeting,
Respondent's Exhibit X: Property tax exemption checklist,
Respondent's Exhibit Y: 2018 Form 136 Application.

6. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; (2) all orders and notices issued by the Board or our designated Administrative Law Judge; and (3) a digital recording of the hearing.

OBJECTIONS

7. The Assessor objected to Petitioner's Ex. 19, an "Affidavit by Chauncey Hitchcock" because he was not the person listed on the Form 136 application. This point is not grounds for the exclusion of an exhibit. Thus, we overrule the objection.
8. Rainbow objected to the admission of Respondent's Exhibits B, E, H, M, R and W, which are minutes from various PTABOA meetings and correspondence between the parties. It argued that in this de novo proceeding these items are irrelevant. Evidence is relevant if it tends to make a fact of consequence "more or less probable than it would be without the evidence." Evid. R. 401. "This often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented." *Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016). We find these exhibits meet the minimum standard of relevance and overrule the objections.

FINDINGS OF FACT

9. Rainbow Rascals Warsaw ("RR1") and Rainbow Rascals IN-Warsaw II ("RR2") are separate business entities that serve as holding companies for realty where they maintain a childcare facility. RR1 is the holding company for property located at 62 Capital Drive, Warsaw, Indiana. RR2 is the holding company for property located at 82 Capital Drive

in Warsaw. Rainbow Rascals manages 150 facilities throughout the United States. *Sykes testimony; Pet'r Ex. 1 & 2.*

10. REE Midwest, Inc., is a for-profit corporation that leases the subject properties from the holding companies. It uses the facilities to provide childcare and educational services to children at both of the Warsaw based facilities. The facility at 62 Capital Drive opened in 2015 and the 82 Capital Drive facility opened in 2018. *Sykes testimony; Pet'r Exs. 3-6.*
11. Teachers at the facilities are required to conduct and record daily observations as part of an overall educational monitoring and planning structure. Teachers use the observations in parent-teacher conferences to update parents on student status and develop future plans for the individual students. Teachers are also responsible for developing and writing lesson plans. Teachers also participate in mandatory staff training twice a year. *Sykes testimony.*
12. The 62 Capital Drive facility received a Level 3 "Paths to Quality" certification on October 17, 2018. The 82 Capital Drive facility has received a Level 1 certification. *Sykes testimony; Pet'r Ex. 9, 10.*

ANALYSIS

A. Motion to Dismiss

13. The Assessor asked the Board to dismiss the 2015-2017 appeals because the Form 132 applications were filed more than 45 days after the PTABOA determinations were issued. Rainbow asserted, both through its counsel and via affidavit, that it never received the PTABOA determinations. Neither party presented convincing evidence on this issue. The Assessor did not specifically state that she had personal knowledge of the mailing. Nor did she present evidence of the mailing processes of her office. Likewise, the affidavit provided by Rainbow only establishes that one person, the general counsel, did not receive the determinations. It does little to show that they were not received and discarded by some other staff member other than a general statement that such mail is typically sent to the general counsel. Because we ultimately find Rainbow failed to make

its case, we decline to address this issue.³

B. Exemption Claim

14. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.*

15. Tangible property owned, occupied, or used by a for-profit provider of early childhood education services to children who are at least four (4) but less than six (6) years of age may receive an educational exemption only if certain requirements are met. Ind. Code § 6-1.1-10-16(p) and Ind. Code § 6-1.1-10-46. Once the requirements are met, the amount of the exemption must be on that part of the assessment that bears the same proportion to the total assessment of the property as the percentage of the property owner’s enrollment count of children who are at least four (4) but less than six (6) years of age compared to the property owner’s total enrollment count of children of all ages. Ind. Code § 6-1.1-10-46.

16. One of those requirements is that:
 - (3) The provider meets the standards of quality recognized by a Level 3 or Level 4 Paths to QUALITY program rating under IC 12-17.2-2-14.2 or has a comparable rating from a nationally recognized accrediting body. Ind. Code § 6-1.1-10-46(a)(3).⁴

The evidence shows that Rainbow failed to meet this requirement for any of the assessment dates at issue. The 62 Capital Drive facility only received its Level 3

³ The Assessor made a number of additional arguments that the exemptions should be denied because of Rainbow’s failure to comply with the application process, and because the properties were owned by a different entity than the provider. We likewise decline to address these claims.

⁴ This statute was amended by *P.L. 130-2018, Sec.22* but the certification requirement was effective for all of the assessment dates under appeal.

certification as of October 17, 2018, well after any of the assessment dates at issue. The 82 Capital Drive facility has only achieved a Level 1 certification. No evidence was offered to show that either facility had “a comparable rating from a nationally recognized accrediting body.” Thus, the subject properties fail to qualify for an educational exemption for any of the years at issue.

17. In addition, even had Rainbow proven that it otherwise qualified for the exemptions; it submitted no credible evidence of the total facility populations and the 4-5 year old populations. Such evidence would be necessary to calculate the actual percentage of exemption.

CONCLUSION

In accordance with the above findings of fact and conclusions of law, we find that the property under appeal is 100% taxable for all years under appeal.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>